GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16041 of Luis E. Rumbaut, Assistant Corporation Counsel, D.C., on behalf of the D.C. Department of Public Works, pursuant to 11 DCMR 3105.1 and 3200.5, from the decision of Sharon T. Nelson, Senior Administrative Law Judge, Office of Adjudication, D.C. Department of Consumer and Regulatory Affairs made on November 21, 1994, dismissing a proposed revocation of a certificate of occupancy for nonconforming use as a trash transfer facility in a C-M-2 District at premises 2160 Queens Chapel Road, N.E. (Square 4259, Parcel 154/72).

HEARING DATE: May 17, 1995
DECISION DATE: May 17, 1995 (Bench Decision)

FINAL DATE OF ORDER: December 12, 1995

RECONSIDERATION ORDER

The Board granted the appeal by its order dated December 12, 1995. On December 26, 1995, the appellee in the above numbered appeal, Mike Perkins, filed a motion for reconsideration of the Board's decision. The appellee, movant herein, based the motion on two main arguments.

First, the movant argued that the Board erred in deciding that he failed to comply with statutory and/or regulatory requirements pertaining to external effects which he filed for his certificate of occupancy (c of o). This is because the appellant had not raised this issue in the notice of proposed revocation and the Board is without authority to revoke his permit based on issues that he had no notice of. The movant further argued that this issue was not before the administrative law judge, therefore, the Board has acted beyond the scope of its authority in addressing it.

Second, the movant argued that the Board misapplied building permit regulations to his c of o application. He stated that Section 805 of DCMR Title 11 applies exclusively to applications for a building permit and not to the issuance of certificates of occupancy. He quoted Subsection 805.1 of the Zoning Regulations which states:

> When filing an application for a permit for a use permitted under Subsection 801.7, the applicant shall submit with the application three (3) copies of the following:
>
> (a) A site plan showing buildings and other structures, roadways, drainage and sanitary facilities, parking spaces,

loading berths, landscaping, and exterior lighting (if any); and

(b) A description of any operations that would be affected by the standards of external effects as provided in Subsection 804.

Emphasis on the word "permit" was added by the movant who argued that the plain language of Subsection 805.1 limits its relevance to applications for building permits. He argued that if the drafters of the regulations had intended to include certificates of occupancy within the perview of Subsection 805.1, they would have so stated in the regulation itself. Finally, in support of his argument, he compared the language in Subsection 805.1 to 805.3 and 805.4 and ultimately concluded that Section 805 does not include a requirement for the c of o applicant to file a site plan or drawings related to parking, building size or topography.

To remedy the errors allegedly made by the Board, the movant requested that the Board reconsider and reverse its decision, or schedule a full evidentiary hearing before the Board or the Office of Adjudication on the issue of external effects and the applicability of 11 DCMR Subsection 805 to the movant in connection with his application for the certificate of occupancy here at issue.

On January 23, 1996, the District of Columbia government (respondent) filed a memorandum in opposition to the reconsideration motion. In the memorandum, the government clarified its position and arguments. The government maintains that in the appeal before the Board, the only issue raised was whether the ALJ's interpretation of the zoning regulations was flawed as they relate to the movant's use. The Board need not rule on whether, as a matter of fact, the movant complied with the standards of external effects. The respondent stated that it only raised the point about the standards for external effects to illustrate that the zoning rules intend to regulate the kinds of materials that can be processed or handled.

To the extent that the movant alleges error based on the Board's conclusions about the external effects standards, the government agrees with the movant. However, the government maintains that the Board's decision to grant the appeal and reverse the ALJ is not in error and should be affirmed with a clarification of the order consistent with the issue actually raised on appeal.

No other persons or parties submitted responses to the motion.

Upon consideration of the motion, the response thereto, the record in the case and the final order, the Board concludes that it did not err in its decision to grant the appeal and reverse the

decision of the ALJ. The Board remains of the opinion that the ALJ erred in not revoking the c of o of the operator due to noncompliance.

The Board notes the movant's argument that the Board erred in considering a matter not raised as an issue by the appellant. The Board also notes the appellant's position that it was not the government's intention for the Board to rule on the movants compliance with the external effects provisions, that this matter was only raised as illustrative of how the Zoning Regulations should be applied and interpreted.

Having received this clarification from the appellant, the Board, on its own motion, determines that the final order should be clarified. The Board concludes that the decision of the ALJ is erroneous for the following reasons: The c of o at issue allows for "light manufacturing, processing, fabricating and warehousing of steel products . . . " (emphasis added). The ALJ's interpretation effectively allows for warehousing of steel products, but light manufacturing, processing and fabricating of anything the operator wishes to handle, simply because the desired use is not specifically delineated in the Zoning Regulations. The Board believes that this interpretation is not logical, that the words "steel products" clearly apply to each of activities listed, not just warehousing. Therefore, the Board hereby **DENIES** the **MOTION** for **RECONSIDERATION** (reaffirming the decision to grant the appeal and to reverse the decision of the ALJ). Further, the Board hereby **CLARIFIES** the original order. In all other respects, the final order of December 12, 1995 remains in full force and effect.

DECISION DATE: February 7, 1996

VOTE: 3-0 (Susan Morgan Hinton, Laura M. Richards and Angel F. Clarens to DENY the request for RECONSIDERATION; Sheila Cross Reid not voting, not having heard the case).

VOTE: 3-0 (Laura M. Richards, Susan Morgan Hinton and Angel F. Clarens to CLARIFY the ORDER; Sheila Cross Reid not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: APR 4 1997

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16041

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 4 1997 a copy of the orders entered on that date in this matter were mailed first class postage prepaid to the appellants, appellees and intervenors who appeared and participated in the public hearing concerning this matter, and who are listed below:

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Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

Date: APR 4 1997